

Appl. No. 10/058,519
Amdt. dated 07/29/2004
Reply to Office Action of 04/29/2004

REMARKS/ARGUMENTS

The courtesies extended by the Examiner to the undersigned and the inventor, Mr. Brian Purser, during the interview in the United States Patent and Trademark Office on July 23, 2004 are acknowledged with appreciation. As a result of the interview, the pending claims have been cancelled and new claims 30-42 submitted. The new claims have been drafted based on the discussions during the interview, particularly the Examiners' suggestion that the orientation of the jaws that permit the wearing flange to be grasped be expressed in terms of the jaws being shaped and adapted to receive only a single rail in an orientation for engagement of only the wearing flange of the single rail without engagement with the rail web and base flange. This has been done in each of the new independent claims.

The rejection under section 112 has been obviated by submission of the new claims.

Claims 17-22 and 24 were rejected as anticipated by the LaBounty Patent No. 5,127,567 ("567 Patent"). Claim 23 has been rejected as obvious over the '567 Patent in view of Pardoe. Claim 25 has been rejected as obvious over the '567 Patent in view of Detriche. Claims 26-29 have been rejected as obvious over the '567 Patent in view of Pardoe and Detriche.

The principal point of discussion during the interview was the LaBounty Patent No. 5,127,567 directed to a rail breaker of a different type from that now claimed. The '567

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Patent discloses a rail breaker that uses a set of jaws to clamp onto several randomly-oriented rails, a nicking blade to nick the rails (or at least some of them) to form a weakness line, and a breaker arm positioned to one side of the the jaws and activated by a separate hydraulic ram to swing against the rails exterior of the jaws with sufficient force to cause them to snap off at the nick.

As noted, the machine shown in the '567 Patent is suitable only for processing rails that have already been removed from the rail bed and cut into relatively short lengths.

In contrast, the claimed invention breaks only 1 rail as a time, and does this by loading the single rail in a single particular orientation into the jaws. That orientation, as claimed, is with only the wearing flange positioned in the jaws. The jaws exert sufficient pressure on the wearing flange that it breaks along a line that migrates down the rail web and base flange, severing the rail. This was graphically demonstrated in both still photographs and movies shown at the interview. The claimed rail breaker may thus be used to break rails still fixed to a road bed, or rails that have already been removed and stacked as scrap.

Applicant submits that the claims patentably define over the '567 Patent and are thus allowable.

Claim 30 incorporates the features and language discussed at the interview, and specifically claims "...the first and second inserts [of the first and second jaws] being

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shaped and adapted to receive only a single rail in an orientation for engagement of only the wearing flange of the single rail without engagement with the rail web and base flange."

Claim 36 incorporates the language of former claim 25 into a claim similar to claim 17, substituting the term "intersects" in place of "alignment" as proposed by the Examiners.

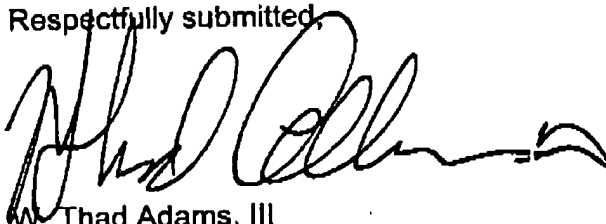
Claim 37 is a revised method claim that tracks the amendments set out in claim 30, including a method step that requires "...a second jaw mounted relative to the first jaw, and having a second hardened rail breaking insert thereon for engaging a second side of the wearing flange opposite the first side of the wearing flange, the first and second inserts being shaped and adapted to receive only a single rail in an orientation for engagement of only the wearing flange of the single rail without engagement with the rail web and base flange. (Emphasis added.)

Claim 42 is a claim that omits reference to the vehicle and vehicle arm, and focusses on the limitations discussed at the interview relating to the "...the first and second inserts being shaped and adapted to receive only a single rail in an orientation for engagement of only the wearing flange of the single rail without engagement with the rail web and base flange."

For all of the reasons discussed above, Applicant submits that all of the claims in the case are now in condition for allowance. Such action is therefore respectfully requested at an early date. If the Examiner believes that issues remain for discussion, he is invited to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,



W. Thad Adams, III
Attorney for Applicant
Reg. No. 29,037

W. Thad Adams, III
ADAMS EVANS P.A.
2180 Two Wachovia Center
301 S. Tryon Street
Charlotte, NC 28282
Tel: (704) 375-9249
Fax: (704) 375-0729
E-mail: wta@adamspat.com

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office to Fax No. (703) 872-9306 on 07/29/2004.


Cecilia M. Sidebottom

7/29/2004
Date of Signature